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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97149; File No. SR-MIAX-2023-11]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Non-Substantively Amend the MIAX Fee Schedule

March 15, 2023.

This document is scheduled to be published in the Federal Register on 03/21/2023 and available online at [federalregister.gov/d/2023-05688](https://www.federalregister.gov/d/2023-05688), and on [govinfo.gov](https://www.govinfo.gov)

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 3, 2023, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (“Fee Schedule”) to make minor, non-substantive clarifying changes.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to make minor, non-substantive clarifying changes. Specifically, the Exchange proposes to amend instances of the phrases “MIAX Select Symbols” and “non-MIAX Select Symbols” in Section 1)a)iii) of the Fee Schedule to clarify that the terms “Select Symbols” and “non-MIAX Select Symbols” refer to options listed on MIAX.

Background

The Exchange initially created the list of Select Symbols on March 1, 2014,³ and has added, removed and amended symbol names of option classes from that list since that time.⁴ Select Symbols are rebated slightly higher in certain Priority Customer Rebate Program (“PCRP”)⁵ tiers and segments than non-Select Symbols. Currently, the term “MIAX Select Symbols” means options overlying AAL, AAPL, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JNJ, JPM, KMI, KO, META, MO, MRK, NFLX, NOK, ORCL,

³ See Securities Exchange Act Release No. 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIAX-2014-13).

⁴ See, e.g., Securities Exchange Act Release Nos. 89530 (August 12, 2020), 85 FR 50845 (August 18, 2020) (SR-MIAX-2020-26); 88850 (May 11, 2020), 85 FR 29497 (May 15, 2020) (SR-MIAX-2020-09); 87964 (January 14, 2020), 85 FR 3435 (January 21, 2020) (SR-MIAX-2020-01); 87790 (December 18, 2019), 84 FR 71037 (December 26, 2019) (SR-MIAX-2019-49); 85314 (March 14, 2019), 84 FR 10359 (March 20, 2019) (SR-MIAX-2019-07); 81998 (November 2, 2017), 82 FR 51897 (November 8, 2017) (SR-MIAX-2017-45); 81019 (June 26, 2017), 82 FR 29962 (June 30, 2017) (SR-MIAX-2017-29); 79301 (November 14, 2016), 81 FR 81854 (November 18, 2016) (SR-MIAX-2016-42); 74291 (February 18, 2015), 80 FR 9841 (February 24, 2015) (SR-MIAX-2015-09); 74288 (February 18, 2015), 80 FR 9837 (February 24, 2015) (SR-MIAX-2015-08); 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR-MIAX-2014-50); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR-MIAX-2014-34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR-MIAX-2014-26); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIAX-2014-13).

⁵ See section 1)a)iii) of the Fee Schedule for a complete description of the PCRP.

PBR, PFE, PG, QCOM, QQQ, RIG, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP.⁶

Proposal

First, the Exchange proposes to amend two column headers of the PCRP Table in Section 1)a)iii) of the Fee Schedule to remove the word “MIAX” from the table columns, “Per Contract Credit for Simple Orders in non-MIAX Select Symbols” and “Per Contract Credit for Simple Orders in MIAX Select Symbols.” Second, the Exchange proposes to add the phrase “Listed on MIAX” to those same two table columns so that with the proposed changes, those columns in the PCRP Table will read as follows: “Per Contract Credit for Simple Orders in non-Select Symbols Listed on MIAX” and “Per Contract Credit for Simple Orders in Select Symbols Listed on MIAX.”

Additionally, the Exchange proposes to remove the word “MIAX” and add the phrase “listed on MIAX” in footnote 14, so that with the proposed changes, footnote 14 will read as follows: “The term ‘Select Symbols’ means options listed on MIAX overlying AAL, AAPL, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JNJ, JPM, KMI, KO, META, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP.”

Finally, the Exchange proposes to amend one of the explanatory paragraphs below the PCRP Table that references “MIAX Select Symbols” to be in line with the changes proposed above. Accordingly, with the proposed change, the explanatory sentence will read as follows: “For each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in Select Symbols in simple order executions, MIAX shall credit each member at the separate per contract rate for Select Symbols listed on MIAX.”

⁶ See Fee Schedule, note 14.

The Exchange notes that it is not changing the application of fees or rebates to Select Symbols or any of the rates in the PCRP Table. The purpose of these proposed changes is to promote clarity within the Exchange's Fee Schedule. The proposed change is immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes make clarifying, non-substantive edits to the Fee Schedule. The Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5)⁹ because it will not permit unfair discrimination among customers, brokers, or dealers because the clarification applies equally to all Members with similarly situated Priority

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(5).

Customer orders in Select Symbols listed on MIAX in the PCRP. All similarly situated Priority Customer orders in Select Symbols are subject to the same rebate schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive filing but rather is designed to remedy minor non-substantive issues and provide added clarity to the Fee Schedule in order to avoid potential confusion on the part of market participants. Consequently, the Exchange does not believe that the proposed change will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹³ permits the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. MIAX has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As MIAX represents above, the proposed rule change would make minor, non-substantive changes to clarify certain references in MIAX's fee schedule to options listed on MIAX. MIAX states that waiver of the operative delay would allow MIAX to immediately clarify its fee schedule and avoid any potential investor confusion. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change makes non-substantive clarifying changes and thus does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MIAX-2023-11 on the subject line.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2023-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2023-11, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,
Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12), (59).

[FR Doc. 2023-05688 Filed: 3/20/2023 8:45 am; Publication Date: 3/21/2023]